SUPREME COURT OF APPEALS OF VIRGINIA.

HARPER et al. *v.* WALLERSTEIN.

Jan. 24, 1918.

[94 S. E. 781.]

1. Specific Performance (§ 29 (2)*)—Contracts—Description of Land—Sufficiency.—Where the vendee ascertained by reference to the land records that the description "No. 504 East Marshall street" in the written contract of sale covered a frontage of 26 feet on such street and extended back 98.70 feet, he was entitled to specific performance as to the entire lot, although the vendor intended to except the portion of the tract not covered by the building thereon.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 493.]

2. Vendor and Purchaser (§ 22*)—Description by Number—Sufficiency.—In a city having a known system of notation regulated by municipal laws, description of premises by number is sufficient, as in such case the premises intended to be conveyed may be identified by means of the description.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 723.]

(Additional Syllabus by Editor.)

3. Evidence—Parol Evidence—Application of Description to Subject-Matter.—Parol evidence is admissible to apply the terms of a written contract to its subject-matter, as to identify land intended to be conveyed by deed in which the description is indefinite or uncertain but capable of identification by parol evidence, maps, plats, lines, records, other conveyances, and so forth.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 427; 10 Va.-W. Va. Enc. Dig. 723.]

Appeal from Chancery Court of Richmond.

Suit by Henry S. Wallerstein against C. B. Harper and another. Judgment for plaintiff, and defendants appeal. Affirmed.

John B. Gayle and *Daniel Grinnan,* both of Richmond, for appellants.

Arden Howell and *S. A. Anderson,* both of Richmond, for appellee.

WHITTLE, P. From a decree of the chancery court of the city of Richmond, granting to the appellee specific performance of a written contract of sale between appellants and appellee of "that certain property situated in the city of Richmond, Va., 'No. 504 East Marshall street and all improvements thereon,' " which the

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

court ascertained fronted 26 feet on East Marshall street, and extended back at a right angle and between parallel lines 98.70 feet, this appeal was granted.

[1] The sale was negotiated by an employee of real estate brokers, agents for appellants, and the contract was prepared in their office. The sole question is: what property is embraced by the description, "* * * the following property, to wit: No. 504 East Marshall street and all improvements thereon"?

The entire property owned by appellants was L-shaped, one end of which fronted on East Marshall street, and the other end on North Fifth street. The former was improved with a store building 66 feet and 3 inches in length; the latter with a brick stable extending entirely across the lot from the North Fifth street front. There is a vacant space in rear of the storehouse, which runs back to a temporary wooden shed attached to the side of the stable toward its rear end.

Appellants admit the execution of the contract of sale, but say that they had in mind and only intended to sell the 66 feet and 3 inches of the lot fronting on East Marshall street actually covered by the buildings; but they did not disclose that fact to appellee. Appellee, on the other hand, examined the land books and records to identify the property designated No. 504 East Marshall street. On the land books he found it charged to appellants as No. 504, containing 26 feet by 98.70 feet. He, moreover, inspected a partition deed dated February 18, 1880, between T. H. Ellett and Mary Etta Brown, in which reference was made to a plat drawn by Bates and Bolton January 30, 1880, which papers and the deed from Ellett, trustee, and Mary Etta Brown and her husband to appellants also described lot 504 as having a depth of 98.70 feet. These records and the testimony of J. S. Clark, a civil engineer, fully and plainly identify the property described in the contract of sale and fix its dimensions as understood by appellee and established by the decree under review. Indeed, appellants themselves must so have regarded it, at least for purposes of taxation, since it was their duty to cause it to be correctly entered on the land books, where, as observed, the foregoing dimensions appear. Code, § 634. These, then, being the established facts, the controlling principles of law are not difficult of application.

The case of Virginia Iron, etc., Co. *v.* Cranes Nest Co., 102 Va. 405, 410, 46 S. E. 393, holds that:

"A conveyance of all the coal underlying the grantor's tract of land known as the 'Sandy Ridge tract,' adjoining the lands of certain named owners, though not a complete description, will convey the coal underlying the tract as it has been known for 20 years prior to the conveyance, although the grantor may have

intended to except a portion of the tract the coal under which he had contracted to sell to another, and although the description would have been equally as accurate if the excepted land was not included. A grantor will not be allowed to change the effect of his conveyance by a statement that he did not intend to include this or that parcel of land therein when such intention was not made known to his grantee at the time and acquiesced in by him."

In Trout *v.* N. & W. Ry. Co., 107 Va. 576, 583, 59 S. E. 394, 397, 17 L. R. A. (N. S.) 702, the court quotes with approval from Melton *v.* Watkins, 24 Ala. 433, 60 Am. Dec. 481, as follows:

"It [the parol evidence] varied by parol the legal effect of the deed and took from the grantee an interest which the deed conveyed to him. The rule is too well settled to require the citation of authority that all previous or contemporaneous parol agreements or understandings between the parties materially altering or varying by adding to or subtracting from the written agreement must be considered as merged in that agreement, and the writing must be regarded as the evidence and sole expositor of the contract of the parties when it is clear and unambiguous."

In Warren *v.* Syme, 7 W. Va. 474, 487, it is said:

"Intrinsic certainty in a deed relative to specific property is simply impossible. The description can be made certain only by proof or recognition of the identity of the subjects to which it refers, or other objects or things that more or less directly and distinctly indicate and determine it. And in the application of deeds and other documents to lands and lots extensive latitude is allowed for the discovery and proof, not only of visible monuments or objects mentioned, but of mathematical lines of other lands and lots, and various classes of facts to which the description or suggestions in the deed may apply. * * *. The certainty of a deed is determined by the principles of the common law. The recordation is regulated by the statute alone."

In Thorn *v.* Phares, 35 W. Va. 772, 14 S. E. 399, it is held:

"The main object of a description of the land sold or conveyed, in a deed of convevance, or in a contract of sale, is not in and of itself to identify the land sold. That it rarely does or can do without helping evidence, but to furnish the means of identification, and when this is done it is sufficient. That is certain which can thus be made certain."

[2] With respect to the sufficiency of the description of lot No. 504:

In Flanigen *v.* City of Philadelphia, 51 Pa. 491, syllabus, it is said:

"In a city having a known system of notation, regulated by

municipal laws and acted upon by every one, the description of premises in ejectment by a number is sufficiently definite."

That the city of Richmond has such a system, see City Code, § 35, p. 312.

So in Tallman *v.* Franklin, 14 N. Y. 584. 592. it is said:

"Nor do I think there was such an uncertainty in the * * * lots as to render the contract incapable of execution, and therefore void. They are described as building lots on 132d and 133d streets, between the Fifth and Sixth avenues. The numbers of the lots are given."

So also in Engler *v.* Garrett, 100 Md. 387, 397, 59 Atl. 648, 650, the court says:

"Nor do we think there can be any objection to the contract on the ground of uncertainty. It describes the property as No. 2035 North Fulton avenue, and further designates it as the property occupied by Samuel S. Linthicum. This certainly is quite as definite and certain as the description we held good in the case of Kraft et al. *v.* Egan, 76 Md. 252 [25 Atl. 469], where it is said that a decree for specific performance will not be refused merely because the contract does not state in what county or state the lands agreed to be conveyed lie, provided the description of the premises is not thereby rendered altogether indefinite."

In Scheible *v.* Slagle, 89 Ind. 324, syllabus, it is said:

"The office of a description in a deed is not to identify the land conveyed, but to furnish the means of identification; and, when there is a general designation of the property intended to be conveyed, parol evidence is competent to show what property the description covers."

And in the opinion, at pages 330 and 331 of 89 Ind. it is said:

"The rule prohibiting the contradiction of written instruments by oral evidence is not invaded by permitting testimony of the declarations of the grantor as to the character and condition of the property in cases where there is a mere general description of the real estate which the grantor assumes to convey. Where there is a general designation of the property intended to be conveyed, it is competent to show by parol what property the description covers."

In Pittsburg, C., C. & St. L. Ry. Co. *v.* Beck, 152 Ind. 421, 53 N. E. 439, it is said:

"Uncertainty in the description in a deed is immaterial, if the premises intended to be conveyed can be identified by means of the description, in connection with other conveyances, plats, lines, or records, well known in the neighborhood, or on file in public offices."

The latest pronouncement of this court on the subject will be

found in the case of Asberry *v.* Mitchell, 121 Va. 276, 93 S. E. 638.

We think the cases relied on by appellants, of which Grayson L. Co. *v.* Young, 118 Va. 122, 86 S. E. 826, is a type, are distinguishable from the case in judgment. In that case it was sought by extrinsic evidence to supply defects and omissions in the terms of the written contract, not, as in this case, merely to apply the contract to its subject matter.

Upon the whole case, we are of opinion that the decree appealed from is without error, and should be affirmed.

Affirmed.

BURKS, J., absent.

Note.

Description of Municipal Property by Street and Number—Parol Evidence to Identify.—Despite the wide divergence of opinion with respect to the limitations of and exceptions to the "parol evidence rule" it may be said that parol evidence (which in this case includes, of course, documentary evidence, and, in fact, all extrinsic evidence whatever) is admissible in the case of a deed, and generally, to identify the subject matter or fit the description to the land intended to be conveyed—in which case a distinction has been taken between applying a description and supplying a description. Dougherty *v.* Chesnutt, 86 Tenn. 1. That parol evidence is admissible to identify the subject matter of a grant has been repeatedly decided in Virginia. (See cases collected in 10 Va.-W. Va. Enc. Dig. 723). The parol evidence rule is only applied as between the parties and has no application to strangers. Bruce *v.* Roper Lumber Co., 87 Va. 381, 383, 13 S. E. 153, 24 Am. St. Rep. 657. For a full discussion of the various ramifications, applications, limitations, qualifications and exceptions to the parol evidence rule, see extended note in 6 L. R. A. 33-47. The principal case follows Flanigen *v.* City of Philadelphia, 51 Pa. 491, in holding that a description of premises in a city by street and number is sufficient to admit the introduction of parol evidence to identify the premises, where there is a known system of notation regulated by municipal laws. It would seem this statement of the rule is too narrow and that the qualification as to the existence of municipal laws is unnecessary. There are a number of other cases which contain practically the same holding without any reference to a system of municipal numbering, which system is of comparatively recent origin in many places. In the principal case the contract of sale stated that the property was situated in Richmond, Va. In some cases even the name of the state or county is not given. Thus in Price *v.* McKay, 53 N. J. Eq. 588, 32 Atl. 130, a receipt for $50 for "the purchase of a lot on Bramhall Ave., No. 740" providing also "I promise that the stable shall be removed, also the privilege of access to my private sewer on property," signed by the owner, was held sufficient to admit parol evidence to identify the property, in a suit for specific performance. The court held that the memorandum was sufficient by reason of the signature of the owner and the reference to a stable and private sewer, to allow parol proof that the lot was located in Jersey City, N. J. The receipt was dated "J. City," but the court upheld its sufficiency without deciding whether that fact authorized a presumption that the land was situated in that place. The vice chancellor distinguished Ross *v.* Allen, 45 Kan. 231, 25 Pac.

571, where a receipt dated at Leavenworth which described property as "Number 617 and 619 Delaware Street, Block 74, City Property," was held insufficient as not locating the property in any state, county or city, on the ground that the receipt was not signed by the owner or any person for him to aid in the identification. Price *v.* McKay, was criticized in Allen *v.* Kitchen, 16 Idaho 133, 100 Pac. 1052, L. R. A. 1917A, 563, 567, wherein the court said "this reasoning proceeds upon the fundamental basis that Bramhall Ave., independent of any city or municipality, was a well-known thoroughfare or natural object and permanent monument, and that any street number tied to that avenue would become definite and certain. There can be no doubt as to the conclusion reached in that case, if it be once conceded that Bramhall Ave. was such a natural and permanent land mark and thoroughfare as it is assumed to be by the opinion of the court." The court also characterized the reasoning of the vice chancellor as circuitous, and held that a contract describing property as "Lots 11, 12 and 13, in Block 13, Lemp's Add.," which omitted to designate the state, county, or civil or political district in which the land was situated, and the municipal or other subdivision to which the tract of land was an "addition" was an insufficient and void description and could not be aided by parol evidence. The courts have frequently applied the presumption that land is located at the place where a contract, receipt or agreement is dated. 36 Cyc. 592. As to the statement of the vendor's ownership relied upon in the New Jersey case, the decisions are not entirely harmonious but parol evidence is usually admitted. 36 Cyc. 593, 594. As a general rule a reference to city lots by number and street is sufficient. 36 Cyc. 593. The sufficiency of description of land is often questioned in the case of deeds. See 13 Cyc. 544, et seq. As to sufficiency of description to admit parol evidence generally, see cases cited in 17 Cyc. 732, et seq. In Schuster *v.* Myers, 148 Mo. 422, 50 S. W. 103, where a block in a town site was platted into lots, in ejectment, a deed conveying a strip of land lying between Lot 5 and Lot 4, in Block 3, was held sufficient, and was located by measuring the lots referred to. It is to be noted that in actions for specific performance descriptions are upheld which would be insufficient in the case of deeds, probably because actions for specific performance usually affect only the parties concerned, while deeds are supposed to give notice to and affect the rights of third persons. See 17 Cyc. 733. In Ross *v.* Purse, 17 Colo. 24, 28 Pac. 473, a contract dated at Denver, Colo., for "a deed to Lot No. 10, in Block No. 47 in Swansea, 1st Add.," was held sufficient for specific performance, the court saying that the instrument being dated at Denver, Colo., showed prima facie that the transaction and property were in Arapahoe County, and that, since by law plats of towns and additions were required to be recorded in the county where situate, it would be assumed that Swansea was such a town and that the first addition thereto was laid out and recorded. But in Guillaume *v.* K. S. D. Fruit Land Co., 48 Ore. 400, 86 Pac. 883, 88 Pac. 586, land designated as Lot No. 16 on a private map on file in the vendor's office was held sufficient for specific performance, although the map was not recorded. And in Snooks *v.* Wingfield, 52 W. Va. 441, 44 S. E. 277, a deed for Lot No. 30, Block 7 on a plat of the town of Whitner, County of Randall, State of West Virginia, was held sufficient, although the court stated that the plat did not appear ever to have been recorded. The legal ground of such decisions is that a map or plat referred to in a deed is incorporated therein by reference.

C. E. S., Jr.